

IN SENATE OF THE UNITED STATES.

FEBRUARY 25, 1846.

Submitted, and ordered to be printed.

Mr. EVANS made the following

REPORT :

[To accompany bill S. No. 96.]

The Committee on Finance, to whom was referred the petition of Richard Kidd and Benjamin Kidd, praying for the payment of a balance of a judgment recovered by them against the collector of the port of New York for duties illegally exacted, report :

That, in the years 1836 and 1837, the petitioners imported into the port of New York sundry cargoes of wheat and flour, of American growth or origin, which had previously been exported from the United States.

The collector of the port required payment of duties upon these importations, as if they had been of foreign growth or origin, upon the ground that the ownership of the same had been changed abroad.

The importers made protest against this demand, but were compelled to pay the duties in order to obtain possession of their property. Application was made to the Secretary of the Treasury to refund the amount thus paid, but without success. The petitioners were then compelled to resort to a suit against the collector of the port ; and, upon the trial of that suit in the courts of the United States, it was adjudged that the wheat and flour thus imported, being of American growth or origin, were not subject to duty—a decision which the Treasury Department have since recognised and practised upon. It is not easy to see how, by existing laws, any other result could have been reached.

The petitioners accordingly obtained judgment in that suit against the collector for the amount of duties illegally exacted, and interest thereon, and for costs—a judgment to which they were clearly entitled, and which, upon every principle of justice and equity, ought to be paid in full.

The defendant in that suit is utterly unable to satisfy said judgment, and indeed ought not to be required to do so, if he were abundantly solvent. He was merely the officer of the government, in discharge of the duty required of him by the instructions of the Treasury Department, and had no personal interest in the matter. The suit against him was for money which he had paid into the treasury of the United States, and was defended by the proper legal officer of the United States, under instructions from the Secretary of the Treasury.

Having thus obtained a judgment, to which they were justly entitled, the petitioners again applied to the Treasury Department for payment.

The Comptroller of the Treasury declined to pay the amount in full, but offered to refund the amount of duty which had been illegally exacted from the petitioners, and which had been retained in the treasury, against their protests and remonstrances, more than seven years, and after they had been compelled to resort to an expensive suit to obtain their just and legal right, upon condition, however, that they would enter satisfaction in full of their said judgment. Having no means of compelling payment by the collector, and without redress against the government, the petitioners were obliged to accept these arbitrary proposals, and did receive from the Comptroller the original amount exacted from them, without interest or cost, and entered satisfaction of the judgment which they had obtained for a much larger sum. They now pray that the balance of that judgment may be paid to them ; and the committee are of opinion that they are justly entitled to it.

In the first place, it is evident that the amount paid by them was illegally and unjustly exacted—without authority of law, and against their protest. It was paid into the treasury, and used by the United States for a period of several years, at a time when the treasury was much embarrassed, and was paying interest on large amounts of notes issued and money borrowed. No reason is perceived why the proper officers of the Treasury Department did not pay the amount of the judgment in full, instead of requiring the petitioners to enter satisfaction, upon payment of a part only. A judgment is the highest evidence of debt known to the laws, and was not in this case, and could not have been, impeached upon any ground. The department had abundant authority to discharge it in full—otherwise, it has greatly transcended its power in a vast number of cases, running through a period of ten years or more, and under several successive administrations of that office. It is well known that a large number of suits have been commenced in the courts of the United States against collectors, to recover back moneys collected for duties, beyond what was authorized by law, under the instructions of the Secretary of the Treasury. A large number of judgments have been obtained in these suits, and, almost without exception, have been paid in full, as an expense attending the collection of the revenues. A report was made at the second session twenty eighth Congress, by this committee, in which the authority to pay such judgments was asserted ; and in which this committee concur. (Senate report No. 154, 2d session 28th Congress.) They believe that there is not only authority to do it, but also that it is the duty of the department to cancel judgments thus obtained ; not merely to indemnify the officer who has incurred liability in obedience to his instructions, but also to indemnify the citizen who has been compelled to pay money not authorized to be collected of him by law, and who has been subjected to the additional expense of a resort to the legal tribunals for redress.

The judgment obtained in this case has never been satisfied ; and, in requiring the plaintiff to admit satisfaction, the Comptroller has exercised a power which he happened to possess, to extort an acknowledgment which, in point of fact, is false. If the Comptroller had seen fit to refund the amount of duties originally paid, under the second section of the act of March 3, 1839, chapter 1212, as an excess of duty paid under protest, he could and should have done so, leaving the petitioners to any benefit they

might have for the balance of their judgment against the collector. If they were entitled under that act to have the duties remitted, the Comptroller had no right to withhold them, or to require any conditions for their repayment. But they had been refused, when seeking the refunding of the duties under that act, and were obliged to resort to the courts for redress, where they obtained judgment. They ask for payment of that judgment, and not for the exercise of the power given to the Secretary of the Treasury in that act. The committee do not regard it as compatible with the just administration of the revenue laws thus to deal with the citizens of the United States, and to compel them to surrender a part of their undoubted claims in order to obtain the residue. The saving to the treasury thus made is too utterly insignificant to warrant such arbitrary proceedings.

The committee therefore report a bill for the relief of the petitioners.

REPORT:

The Committee on Petitions, to whom was referred the petition of William Pennington, report:

The petitioner alleges that he was a soldier of the revolutionary war, and served three months in the year 1775, under Captain Eli Root. That on the 1st of March, 1780, he enlisted for nine months to serve under said Eli Root, and served out the time for which he enlisted. That on the 1st of March, 1781, he again enlisted for nine months, under Captain Richard Bowfield, and served under him until the latter part of July following, when he was taken prisoner, and carried into France island, then in possession of the British army, where he remained a prisoner during the war.

It appears that the allegation of the petitioner of his service under Captain Root, was contradicted by the rolls of that company in the British Office, his name not being found thereon. These rolls cannot be refuted by any testimony whatever, the credit of the record being greater than the testimony of witnesses. The petitioner alleges service under Captain Eli Root, but the Comptroller's certificate, filed with the papers, contradicts the claimant's assertions. This claim not being supported by evidence, the committee recommended the adoption of the following resolution:

Resolved, That the prayer of the petition ought not to be granted.

Wm. B. Hall, 1811.

